

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

-----		X
MELISSA SOLANO and CEIL STEARMAN	)	
	)	
Plaintiffs,	)	Case No. 08 CV 3909
	)	
- against -	)	
	)	
ROLLING STONE L.L.C.,	)	
	)	
Defendant.	)	
	)	
-----		X

**DECLARATION OF ELIZABETH A. McNAMARA IN SUPPORT OF  
DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
FOR SUMMARY JUDGMENT**

I, ELIZABETH A. McNAMARA, declare as follows:

1. I am a partner in the law firm of Davis Wright Tremaine LLP, counsel for defendant Rolling Stone LLC ("Rolling Stone"). I submit this Declaration in support of Rolling Stone's motion to dismiss or for summary judgment and to supply certain background information and documents to the Court.
2. On May 24, 2008, plaintiffs filed this action in the Law Division of the Circuit Court of Cook County. A copy of the Complaint is attached as Exhibit A. Rolling Stone was served with the Complaint on or about June 10, 2008, and Rolling Stone removed the action to this Court on July 9, 2008.
3. On June 18, 2008, I wrote a letter to Plaintiffs' counsel explaining why Rolling Stone believed that there was no factual or legal basis for Plaintiffs' claims and asking them to withdraw the Complaint. A copy of my June 18, 2008 letter is attached as Exhibit B. In response to my letter, on or about July 10, 2008, I spoke with Plaintiffs' counsel and received a letter informing me that Plaintiffs would amend their Complaint to withdraw the false light

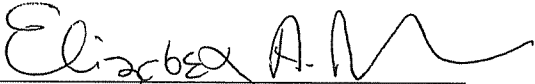
claim. Specifically, Plaintiffs' counsel said in his letter, "I would also like to confirm that I have told you that I intend to amend the Complaint and drop the 'false light' count. It is unnecessary to brief the issue." (For purposes of Rule 408, I do not attach Plaintiffs' counsel's letter.) To date, however, Plaintiffs have not withdrawn or amended their complaint.

4. After Plaintiffs commenced this Action, it was brought to Rolling Stone's attention that the two Plaintiffs worked for a bachelor party service called Next Plateau Chicago ("NPC") under the professional names of "Brook" and "Ashley." My firm verified this by going to NPC's website and locating the pages for "Brook" and "Ashley." I attach as Exhibit C representative copies of the homepage and other relevant pages, including the pages for "Brook" and Ashley," from the NPC site as it appeared in June, 2008, when these pages were downloaded and printed from the NPC website. Among other comments, the NPC page for "Ashley" included the statement that "I do a wild and crazy 2-girl show with my girlfriend Brook we were both featured in the rolling stone magazine together." *Id.* at 2. I understand that at some point subsequent to that time the NPC website was modified and the Brook and Ashley pages no longer appear on the site.

5. The [www.hotchickswithdouchebags.com](http://www.hotchickswithdouchebags.com) website that was featured in the "On the Web" column at issue in this action has become the subject of a Simon & Schuster book that was recently published. I enclose as Exhibit D a printout of the book's listing on Simon & Schuster's official website and the listing for the book on Amazon.com.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 7, 2008.

  
Elizabeth A. McNamara

**CERTIFICATE OF SERVICE**

This is to certify that I have this date caused to be served a true and correct copy of the foregoing ***Declaration of Elizabeth A. McNamara in Support of Defendant's Motion to Dismiss or, In the Alternative, for Summary Judgment*** on:

Steven A. Sigmond  
The Law Offices of Steven A. Sigmond  
354 N. Canal  
Suite 1208  
Chicago, IL 60606  
E-mail: [steve@siglaw.com](mailto:steve@siglaw.com)

via messenger delivery and via electronic mail on August 8, 2008.

/Steven L. Baron/  
Steven L. Baron

# **EXHIBIT A**

**CT CORPORATION**

A WoltersKluwer Company

**Service of Process  
Transmittal**

06/10/2008

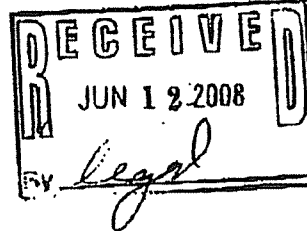
CT Log Number 513512991



**TO:** Dana Rosen  
Wenner Media Incorporated  
1290 Avenue of the Americas  
New York, NY 10104-

**RE:** Process Served in Illinois

**FOR:** Rolling Stone LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Melissa Solano and Cecil Stearman, Plffs. vs. Rolling Stone L.L.C., Dft.

**DOCUMENT(S) SERVED:** Summons, Complaint

**COURT/AGENCY:** Cook County Circuit Court - Cook County Department - Law Division, IL  
Case # 2008L005729

**NATURE OF ACTION:** Publication of her picture in an issue of the magazine without her consent for commercial benefit

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Chicago, IL

**DATE AND HOUR OF SERVICE:** By Process Server on 06/10/2008 at 10:30

**APPEARANCE OR ANSWER DUE:** Within 30 days, not counting the day of service

**ATTORNEY(S) / SENDER(S):** Steven A. Sigmund  
Law Offices of Steven A. Sigmund  
345 N. Canal  
Suite 1208  
Chicago, IL 60606  
312-258-8188

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day, 790031808140

**SIGNED:** C T Corporation System

**PER:** Tawana Carter

**ADDRESS:** 208 South LaSalle Street  
Suite 814  
Chicago, IL 60604

**TELEPHONE:** 312-345-4336

Page 1 of 1 / KS

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

08 CV 3909

JUDGE LEFKOW

MAGISTRATE JUDGE VALDEZ

RCC

JUN 13 2008 10:15 AM FR WENNER MEDIA

212 484 4301 TO 912124898340,,69 P.03

2120 - Served  
 2220 - Not Served  
 2320 - Served By Mail  
 2420 - Served By Publication  
 SUMMONS

2121 - Served  
 2221 - Not Served  
 2321 - Served By Mail  
 2421 - Served By Publication  
 ALIAS - SUMMONS

CCG N001-10M-1-07-05 ( )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, LAW DIVISION

(Name all parties)  
 MELISSA SOLANO and CEIL STEARMAN

2008L005729  
 CALENDAR/ROOM 5  
 TIME 00:00  
 Statutory Action

v.

ROLLING STONE L.L.C.

No. \_\_\_\_\_

Please Serve Registered Agent:  
 CT Corporation System  
 208 S. LaSalle Street  
 Chicago, IL 60604

## SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- ☒ Richard J. Daley Center, 50 W. Washington, Room \_\_\_\_\_, Chicago, Illinois 60602
- |  |   |   |
|--|---|---|
| <input type="checkbox"/> District 2 - Skokie<br>5600 Old Orchard Rd.<br>Skokie, IL 60077       | <input type="checkbox"/> District 3 - Rolling Meadows<br>2121 Euclid<br>Rolling Meadows, IL 60008 | <input type="checkbox"/> District 4 - Maywood<br>1500 Maybrook Ave.<br>Maywood, IL 60153          |
| <input type="checkbox"/> District 5 - Bridgeview<br>10220 S. 76th Ave.<br>Bridgeview, IL 60455 | <input type="checkbox"/> District 6 - Markham<br>16501 S. Kedzie Pkwy.<br>Markham, IL 60426       | <input type="checkbox"/> Child Support<br>28 North Clark St., Room 200<br>Chicago, Illinois 60602 |

You must file within 30 days after service of this Summons, not counting the day of service.  
 IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 16131

Name: Steven A. Sigmond

Atty. for: Plaintiffs

Address: 345 N. Canal Street, St. 1208

City/State/Zip: Chicago, IL 60606

Telephone: (312) 258-8188

Service by Facsimile Transmission will be accepted at: \_\_\_\_\_

WITNESS, \_\_\_\_\_

DOROTHY BROWN  
 CLERK OF THE COURT  
 MAY 21 2008



Date of service: \_\_\_\_\_  
 (To be inserted by officer on copy left with defendant or other person)

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

www.courthousenews.com

#1979

#16131

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MELISSA SOLANO and  
CEIL STEARMAN

Plaintiffs,

vs.

ROLLING STONE L.L.C.,  
a Foreign Corporation

Defendant,

No.

2008L005729  
CALENDAR ROOM 8  
TIME 00:00  
Statutory Action

PM 12:03

COMPLAINT

NOW COME the Plaintiffs, MELISSA SOLANO and CEIL STEARMAN, by and through their attorney, STEVEN A SIGMOND, and complaining against the Defendant, ROLLING STONE L.L.C, state as follows:

COUNT I

1. On or about May 18, 2007, and at all other times relevant hereto, the Plaintiff, MELISSA SOLANO, was an individual residing within the City of Chicago, County of Cook, State of Illinois.
2. On or about May 31, 2007, and at all other times relevant hereto, the Defendant, ROLLING STONE L.L.C, was a Foreign Corporation, publishing and distributing Rolling Stone Magazine, with regional offices in Chicago, Illinois and selling and distributing the magazine within the State of Illinois, County of Cook, and City of Chicago.
3. On or about May 31, 2007, the Plaintiff, MELISSA SOLANO, was an individual residing in the County of Cook, City of Chicago, State of Illinois. At the aforementioned time,

the Plaintiff, CEIL STEARMAN, was also an individual residing in City of Chicago, County of Cook, State of Illinois.

4. At the aforementioned time, place and date, and at all other times relevant hereto, the Defendant, ROLLING STONE L.L.C had a duty to exercise reasonable care and caution in the publication and distribution of its magazine.

5. In violation of the aforementioned duties, the Defendant was then and there guilty of the following acts:

a.) The defendant placed the Plaintiff, MELISSA SOLANO, in a false light before the public by publishing an identifiable topless picture of the Plaintiff, without her permission and for commercial purposes, in the lower right-hand corner of page 42 of the May 31st issue.

b.) Although all the other pictures of non-celebrities on the page of the magazine are blurred and credited, the picture of the Plaintiff, MELISSA SOLANO, is identifiable because it clearly shows her face, multiple tattoos on her body, and a personal necklace.

c.) The picture which shows the girls topless and kissing a man at the same time would undoubtedly be offensive to a reasonable person.

d.) The Defendant, ROLLING STONE L.L.C published the picture of the plaintiff with reckless disregard to her feelings or the harm it could cause to her reputation.

6. As a result of the foregoing, the Plaintiff, MELISSA SOLANO, was harmed by the publication of her picture in the May 31, 2007 issue of Rolling Stone Magazine because the publication was injurious to her good name and reputation. In addition, her feelings have been injured, and she has incurred mental suffering and anguish.

## COUNT II



7-10. Repeats and re-alleges the allegations contained in paragraphs one through four of Count I, incorporating them by reference.

11. In violation of the aforementioned duties, the Defendant was then and there guilty of the following acts:

a.) Appropriating the plaintiff, MELISSA SOLANO's, likeness by publishing a picture of her without her consent for commercial benefit.

12. As a result of the foregoing, the Plaintiff, MELISSA SOLANO was harmed by the publication of her picture in the May 31, 2007 issue of Rolling Stone Magazine because she is entitled to value of her image and has a right to this value under the Right to Publicity Act. 765 ILCS 1075/60.

### COUNT III

13-15. Repeats and re-alleges the allegations contained in paragraphs one through four of Count I, incorporating them by reference.

16. In violation of the aforementioned duties, the Defendant was then and there guilty of the following acts:

a.) The defendant placed the Plaintiff, CEIL STEARMAN, in a false light before the public by publishing an identifiable topless picture of the Plaintiff, without her permission and for commercial purposes, in the lower right-hand corner of page 42 of the May 31st issue.

b.) Although all the other pictures of non-celebrities on the page of the magazine are blurred and credited, the picture of the Plaintiff, CEIL STEARMAN, is identifiable because it clearly shows her face.

c.) The picture which shows the girls topless and kissing a man at the same time would undoubtedly be offensive to a reasonable person.

d.) The Defendant, ROLLING STONE L.L.C published the picture of the plaintiff with reckless disregard to her feelings or the harm it could cause to her reputation.

17. As a result of the foregoing, the Plaintiff, CEIL STEARMAN, was harmed by the publication of her picture in the May 31, 2007 issue of Rolling Stone Magazine because the publication was injurious to her good name and reputation. In addition, her feelings have been injured, and she has incurred mental suffering and anguish.

#### COUNT IV

18-20. Repeats and re-alleges the allegations contained in paragraphs one through four of Count I, incorporating them by reference.

21. In violation of the aforementioned duties, the Defendant was then and there guilty of the following acts:

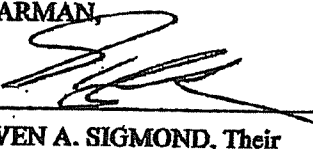
a.) Appropriating the plaintiff, CEIL STEARMAN's, likeness by publishing a picture of her without her consent for commercial benefit.

22. As a result of the foregoing, the Plaintiff, CEIL STEARMAN was harmed by the publication of her picture in the May 31, 2007 issue of Rolling Stone Magazine because she is entitled to value of her image and has a right to this value under the Right to Publicity Act. 765 ILCS 1075/60.

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WHEREFORE the Plaintiffs, MELISSA SOLANO and CEIL STEARMAN, pray for judgment in their favor and against the Defendant, ROLLING STONE L.L.C, in a sum sufficient to compensate them for the aforesaid injuries, which sum is well in excess of the jurisdictional limits of \$30,000.00 plus costs.

Respectfully submitted,  
MELISSA SOLANO and CEIL  
STEARMAN,

BY:   
STEVEN A. SIGMOND, Their  
Attorney

#16131  
Steven A. Sigmond  
THE LAW OFFICES OF STEVEN A. SIGMOND  
345 N. Canal  
Suite 1208  
Chicago, IL 60606  
(312) 258-8188

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS  
ATTORNEY APPEARANCE FORM**

NOTE: In order to appear before this Court an attorney must either be a member in good standing of this Court's general bar or be granted leave to appear *pro hac vice* as provided for by Local Rules 83.12 through 83.14.

In the Matter of  
Melissa Solano and Ceil Stearman  
vs.  
Rolling Stone LLC.,

Case Number:  
FILED: JULY 09, 2008  
08 CV 3909  
JUDGE LEFKOW  
MAGISTRATE JUDGE VALDEZ

RCC  
AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:  
Rolling Stone LLC.,

NAME (Type or print) Steven L. Baron	
SIGNATURE (Use electronic signature if the appearance form is filed electronically) s/ Steven L. Baron	
FIRM Mandell Menkes LLC	
STREET ADDRESS 333 W. Wacker Drive #300	
CITY/STATE/ZIP Chicago, IL 60606	
ID NUMBER (SEE ITEM 3 IN INSTRUCTIONS) 6200868	TELEPHONE NUMBER 312-251-1000
ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
IF THIS IS A CRIMINAL CASE, CHECK THE BOX BELOW THAT DESCRIBES YOUR STATUS. RETAINED COUNSEL <input type="checkbox"/> APPOINTED COUNSEL <input type="checkbox"/>	

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS  
ATTORNEY APPEARANCE FORM**

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In the Matter of  
Melissa Solano and Ceil Stearman  
vs.  
Rolling Stone LLC.,

Case Number:  
FILED: JULY 09, 2008  
08 CV 3909  
JUDGE LEFKOW  
MAGISTRATE JUDGE VALDEZ  
RCC

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:  
Rolling Stone LLC.,

NAME (Type or print) Natalie A. Harris	
SIGNATURE (Use electronic signature if the appearance form is filed electronically) s/ Natalie A. Harris	
FIRM Mandell Menkes LLC	
STREET ADDRESS 333 W. Wacker Drive #300	
CITY/STATE/ZIP Chicago, IL 60606	
ID NUMBER (SEE ITEM 3 IN INSTRUCTIONS) 6272361	TELEPHONE NUMBER 312-251-1000
ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
IF THIS IS A CRIMINAL CASE, CHECK THE BOX BELOW THAT DESCRIBES YOUR STATUS. RETAINED COUNSEL <input type="checkbox"/> APPOINTED COUNSEL <input type="checkbox"/>	

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS  
ATTORNEY APPEARANCE FORM**

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In the Matter of  
Melissa Solano and Ceil Stearman  
vs.  
Rolling Stone LLC.,

Case Number:  
FILED: JULY 09, 2008  
08 CV 3909  
JUDGE LEFKOW  
MAGISTRATE JUDGE VALDEZ  
RCC

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:  
Rolling Stone LLC.,

NAME (Type or print) Lindsay H. LaVine	
SIGNATURE (Use electronic signature if the appearance form is filed electronically) s/ Lindsay H. LaVine	
FIRM Mandell Menkes LLC	
STREET ADDRESS 333 W. Wacker Drive #300	
CITY/STATE/ZIP Chicago, IL 60606	
ID NUMBER (SEE ITEM 3 IN INSTRUCTIONS) 6291725	TELEPHONE NUMBER 312-251-1000
ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
IF THIS IS A CRIMINAL CASE, CHECK THE BOX BELOW THAT DESCRIBES YOUR STATUS. RETAINED COUNSEL <input type="checkbox"/> APPOINTED COUNSEL <input type="checkbox"/>	

## CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>(a) PLAINTIFFS</b> Melissa Solano and Ceil Stearman</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Cook</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Steven A. Sigmond - Law Offices of Steven A. Sigmond 345 N. Canal #1208, Chicago, IL 60606 312-258-8188</p>	<p><b>DEFENDANTS</b> Rolling Stone LLC.,</p> <p>County of Residence of First Listed Defendant <u>New York</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p><b>Attorneys (If Known)</b> Steven L. Baron Natalie A. Harris Lindsay H. LaVine</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> 1 U.S. Government Plaintiff   <input type="checkbox"/> 2 U.S. Government Defendant             </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)   <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)             </td> </tr> </table>	<input type="checkbox"/> 1 U.S. Government Plaintiff  <input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Citizen of This State <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</p> <p>Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3</p> </td> <td style="width: 50%; vertical-align: top;"> <p>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p> </td> </tr> </table>	<p>Citizen of This State <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</p> <p>Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3</p>	<p>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>
<input type="checkbox"/> 1 U.S. Government Plaintiff  <input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)				
<p>Citizen of This State <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</p> <p>Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3</p>	<p>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>				

IV. NATURE OF SUIT (Place an "X" in One Box Only)			
<p><b>CONTRACT</b></p> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Inj.	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<p><b>FORFEITURE/PENALTY</b></p> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 ADA—Employment <input type="checkbox"/> 446 ADA—Other <input type="checkbox"/> 440 Other Civil Rights	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p><b>BANKRUPTCY</b></p> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<p><b>OTHER STATUTES</b></p> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Security/Commodity/Exch. 12 USC 3410 <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions			

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened
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☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

<p><b>VI. CAUSE OF ACTION</b> (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)</p> <p>Removal of false light and invasion of privacy action pursuant to 28 U.S.C. § 1441, 1446</p>	<p><b>VII. PREVIOUS BANKRUPTCY MATTERS</b> (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter perviously adjudicated by a judge of this Court. Use a separate attachment if necessary)</p>
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<p><b>VIII. REQUESTED IN COMPLAINT:</b></p>	<p><input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23</p>	<p><b>DEMAND \$</b></p>
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<p><b>IX. This case</b></p> <p><input checked="" type="checkbox"/> is not a refiling of a previously dismissed action.</p> <p><input type="checkbox"/> is a refiling of case number _____, previously dismissed by Judge _____</p>	<p>FILED: JULY 09, 2008</p> <p>08 CV 3909</p>
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<p>DATE</p>	<p>SIGNATURE OF ATTORNEY OF RECORD</p> <p>/s/ Steven L. Baron</p>	<p>JUDGE LEFKOW</p> <p>MAGISTRATE JUDGE VALDEZ</p> <p>RCC</p>
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# **EXHIBIT B**



LAWYERS



## Davis Wright Tremaine LLP

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June 18, 2008

**BY FEDERAL EXPRESS AND E-MAIL**

Steven A. Sigmond, Esq.  
The Law Offices of Steven A. Sigmond  
345 North Canal Street  
Suite 1208  
Chicago, IL 60606

Re: Solano, et al. v. Rolling Stone L.L.C.

Dear Mr. Sigmond:

We write as counsel for Rolling Stone LLC, in response to the complaint served in the above-referenced action on June 10, 2008 ("Complaint"). Read charitably, the Complaint appears to allege that the publication of a photograph depicting plaintiffs in the May 2007 issue of *Rolling Stone* magazine (the "Photograph") placed plaintiffs in a false light and constituted an unauthorized commercial use of their likeness in violation of Illinois Right to Publicity Act. As set forth in more detail below, these claims are utterly frivolous from a factual and legal standpoint. We ask that your clients withdraw this action by June 27, 2008. If you fail to withdraw this action, we have also been instructed to seek the full panoply of sanctions against your firm and/or your clients, including an award of expenses and attorneys' fees, pursuant to Illinois Supreme Court Rule 137, Rule 11, or any other applicable rule. Your clients' action fails procedurally, factually and legally for several independent reasons. Let me explain.

First, procedurally, the action fails because both claims are barred by the applicable statute of limitations. The Photograph at issue was published in the May 31, 2007 issue of *Rolling Stone*. The on sale date of the magazine was May 18, 2007 and subscriptions were mailed on the same day. However, this action was filed on May 24, 2008, more than one year after the magazine was published and available to the public. As you well know, both false light and right of publicity claims under Illinois law have a one year statute of limitations. See, e.g., 735 ILCS 5/13-201 (West 1992); *Blair v. Nevada Landing Partnership*, 369 Ill. App.3d 318, 323 (2nd Dist. 2006). In short, even if the claims were factually or legally viable – which they plainly are not – they are barred by the statute of limitations.

Steven A. Sigmond, Esq.  
Page 2  
June 18, 2008

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Next, the facts that are undisputed or could not be seriously challenged render the assertion of plaintiffs' supposed "false light" claim patently absurd.

The Photograph is included in a regularly recurring column called "On The Web", which features websites selected by the editors which they believe might be of interest to *Rolling Stone's* readers. One website featured in this issue was hotchickswithdouchebags.com. It is described as displaying "photos of gelled-and-tanned dudes and hot babes mugging it up for the camera". The Photograph depicts your clients with their hands covering their bare breasts on either side of a man who they are kissing. The Photograph was obtained from the hotchickswithdouchebags.com website and is plainly used to illustrate the type of material that can be found on the site. Your clients do not dispute that the Photograph is an actual photo of them; nor do they dispute that the Photograph was obtained from the website hotchickswithdouchebags.com. Needless to say, the Photograph speaks volumes and plainly represents "hot babes" mugging it up for the camera.

Further, the Photograph was previously published on hotchickswithdouchebags.com and was no doubt viewed by hundreds of thousands – if not millions – of internet users. It is inconceivable that your clients could suffer cognizable reputational harm from the republication of the Photograph in a magazine such as *Rolling Stone* when the same photo has long been publicly available on the world wide web at a site bearing the name "Hot Chicks With Douche Bags".

The factual predicate to your clients' claims is yet further undermined by certain facts about Ms. Solano and Ms. Stearman, that you may not be aware. We understand that plaintiffs work for a bachelor party service by the name of Next Plateau Chicago. Next Plateau Chicago (available at <http://www.nextplateauchicago.com>) describes itself as "Chicagoland's premiere bachelor party service" with a specialty in "2 girl bi-sexual toy shows." Its website advertises that "our girls will perform for you intimately with toys, fruit, etc. all the while keeping the bachelor apart [sic] of the show."

At Next Plateau Chicago ("NPC"), Ms. Solano and Ms. Stearman use the professional names of "Brook" and "Ashley" and advertise that they perform both together and individually. Notably, "Brook" and "Ashley" each have their own page on the NPC website where they display photos of themselves topless and/or fully nude. These photos are considerably larger and more revealing than the Photograph. In one photo, "Ashley" appears fully nude reclining on a bed. In another, "Brook" appears topless in a pose strikingly similar to that in the Photograph. Ms. Stearman and Ms. Solano are also significantly more identifiable in the photos on the NPC website than they are in the Photograph, as the NPC photos are larger and display Ms. Solano's and Ms. Stearman's full faces and bodies.

In addition to the pictures, plaintiffs' pages on the NPC website provide details of the services they offer. "Brook's" page advertises that she is "available to do an amazing 2-girl

Steven A. Sigmond, Esq.  
 Page 3  
 June 18, 2008



show with our sexy busty blond Ashley or sinful brunette Sadie.” Ashley similarly advertises that she does “a wild and crazy 2-girl show with [her] girlfriend Brook.” Then, exposing the sham that this action is, far from supporting her allegations in the Complaint that publication of the Photograph in *Rolling Stone* was “injurious to her good name and reputation” and that her “feelings have been injured”, “Ashley” proudly gloats that “with my girlfriend [Brook] we were both featured in the rolling stone magazine together.”

Under these facts and the applicable law, it is clear that Ms. Solano and Ms. Stearman have no possible basis for their claim that Rolling Stone “placed them in a false light before the public by publishing an identifiable topless picture”. It is axiomatic that a plaintiff stating a claim for false light must establish, *inter alia*, falsity. *Thomas v. Pearl*, 998 F.2d 447, 452 (7th Cir. 1993) (dismissing claim where plaintiff failed to establish how defendant’s action put him in a false light); *Krieger v. Adler, Kaplan & Begy*, 1996 WL 6540, at \*10 (N.D. Ill. Jan. 5, 1996) (“Like defamation, this tort requires falsity”). Under no set of circumstances can plaintiffs, who earn a living by performing in bi-sexual sex toy bachelor shows, and who advertise their services by posting nude photos of themselves on the internet, establish that a picture of them “topless and kissing a man” places them in a “false light”. Indeed, by admitting that plaintiffs are the two girls posing topless in the Photograph, the Complaint alone confirms that there is nothing “false” about the Photograph or its placement along side the article discussing hotchickswithdouchebags.com. *Raveling v. Harpercollins Publishers, Inc.*, 2004 WL 422538 (N.D. Ill. Feb. 10, 2004) (plaintiff failed to state claim for false light invasion of privacy where she objected only to inclusion of her photograph in book, but did not deny that she was accurately portrayed in the photograph); *see* Complaint, ¶¶ 5, 16. Nor can plaintiffs establish that they were injured by the republication of the Photograph in *Rolling Stone*, considering that the Photograph was previously published and made available to millions of viewers on a popular website. Indeed, plaintiffs’ touting of the Photograph’s appearance in *Rolling Stone* on the NPC website exposes their allegations of reputational injury and hurt feelings as indisputably frivolous.<sup>1</sup> In short, plaintiffs’ “false light” claim lacks any basis in fact or law and, in addition to being subject to an upfront motion to dismiss, is so meritless as to warrant an award of sanctions.

Likewise, plaintiffs have not alleged a colorable claim for violation of Illinois’ Right To Publicity Act. The Right to Publicity Act prevents the unauthorized commercial use of a person’s “identity”, which is defined as “any attribute of an individual that serves to identify that

<sup>1</sup> If yet another infirmity to plaintiffs’ claims were needed, it is also far from clear that plaintiffs are even identifiable in the Photograph. The Photograph which measures no more than two by two inches shows only their profiles. The allegation that plaintiffs are identifiable because the Photograph shows their “face, multiple tattoos on [their] bod[ies], and a personal necklace” is entirely contradicted by close inspection of the Photograph. Not only are plaintiffs’ full faces not shown, but no tattoos or personal effects are visible. At most, some faint markings can be seen on the waste-line of one of the plaintiffs. However these are not recognizable as tattoos nor are they sufficiently discernable such that a reasonable reader would recognize them as Ms. Solano’s or Ms. Stearman’s particular tattoos.

Steven A. Sigmond, Esq.  
 Page 4  
 June 18, 2008



individual to an ordinary, reasonable viewer or listener.” ILCS 1075/5. As discussed above, no reasonable viewer would be able to identify plaintiffs in the Photograph. Moreover, even if plaintiffs were identifiable, the Act expressly exempts the use of an individual’s identity for “non-commercial purposes”, including “news” and “public affairs” accounts. ILCS 1075/35(b)(2). It is undisputed that the Photograph originally appeared on the website hotchickswithdouchebags.com and was republished by defendant in an article discussing unique websites, including www.hotchickswithdouchebags.com. Use of a photograph from a website discussed in an article for the purpose of illustrating the content of that website is a consummate non-commercial use. *See, e.g., Buzinski v. DoAll Co.*, 31 Ill. App. 2d 191, 175 N.E.2d 577 (1st Dist. 1961) (magazine had a right to publish picture of a plaintiff standing next to a “land yacht” in connection with a story on land yachts); *Berkos v. Nat’l Broadcasting Co., Inc.*, 161 Ill. App. 3d 476, 515 N.E.2d 668 (1st Dist. 1987) (“A commercial appropriation claim cannot be stated where a plaintiff’s name or likeness has been used as part of a ‘vehicle of information,’ such as the news media”); *Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 776 N.E.2d 693 (1st Dist. 2002) (television advertisement showing owner of hot dog stand being questioned by a reporter was not broadcast for commercial purposes, but for the noncommercial purpose of promoting news reports).

In light of the above, it is abundantly apparent that plaintiffs’ claims are not only untenable as a matter of law, they lack any good faith basis in fact. This conclusion was already made clear to you in correspondence with *Rolling Stone* back in June 2007 when you first asserted these claims. We fully expect that armed with these undisputed facts and the law, your clients will do the right thing and withdraw this action by June 27, obviating the need for expensive and time consuming motion practice. If, however, your clients decide to proceed, we are prepared to seek the appropriate sanctions, which we believe are wholly warranted by the frivolous and unsubstantiated claims they have elected to interpose. I look forward to your prompt response. This letter is made without waiver of any of our client’s rights, remedies, claims or defenses, all of which are hereby expressly preserved.

Sincerely,

*Elizabeth A. McNamara* /BMT

Elizabeth A. McNamara

# EXHIBIT C



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# Home Welcome to Next Plateau CHICAGO The Gallery & Photo

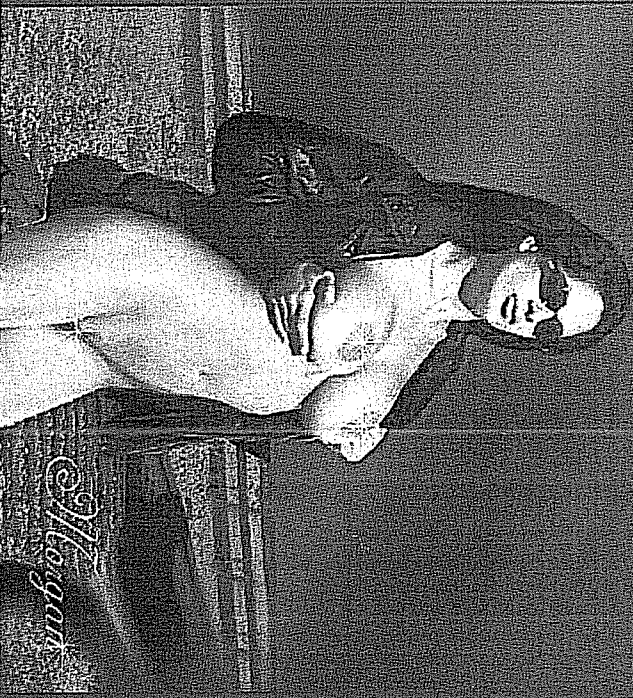
Thank you for your interest in **NEXT PLATEAU CHICAGO**. We are Chicago's premier bachelor party service. Our specialty is in 2 girl bi-sexual toy shows. The company was established in 1992, and has been in business this long only because of customer satisfaction! From mild to WILD we always guarantee beautiful, fit, fun females.

Our Parties are famous throughout the Chicago area. Our girls will perform for you intimately with toys, fruit, etc. all the while keeping the bachelor apart of the show. The show is shocking and entertaining. Your bachelor and friends will leave the party in amazement!

Unlike our competitors we are the bachelor party service that shows up promptly. We are the "Rolls Royce" of the 2 girl bi show. You can rest assure that your party is in good hands. We understand that your bachelor must go out with a bang!!!

So if your party has to be a hit make it HOT with **NEXT PLATEAU CHICAGO ENTERTAINMENT**, your satisfaction is guaranteed.

For further information, you can contact a party representative at 773.804.0700



Chicago







# Brook



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## Brook & Ashley



Hi Boys! We are Chicago's Hottest two-girl team our show is so wild we will leave you mesmerized begging for more book us and you will be dazed and confused Brook can also work with Saddle upon request

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# Next Plateau CHICAGO



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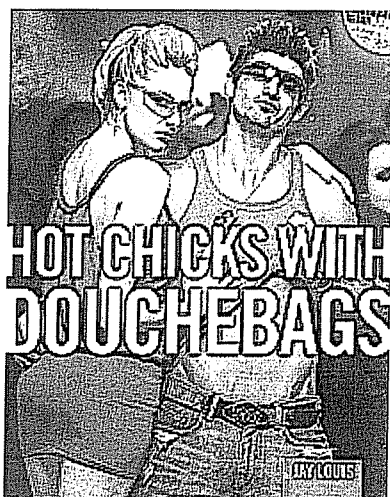
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### Description

Greasy foreheads. Spiky frosted hair. Oiled-up faces dripping with Tag Body Shot spray. Armani Exchange T-shirts and rank cologne wafting off their backs like fetid pollen clouds as they pump their fists and attempt to grind into any hotties nearby. Young beauties oblivious to the hulking monstrosity clutching at their butts like snapping turtles on Red Bull.

From sea to douche sea, ours is a culture plagued by this festering blight. By the dark forces of über-douchebaggery.

How did this happen? What can we do to confront the douchebag/hottie plague that rots our collective souls like boils sent by a wrathful and angry God? And how can you recover if you or your loved one is 'bag?

Now, for the first time, there is an answer to those questions that haunt our collective will and sap our culture of any claim to societal advance: Why hottie/douchebaggery? Why now? And why are douche-faces so silly? In this book we dissect, analyze, contemplate

and mock the rank douchescrotes that pollute our country's hottie supply on a daily basis. Every branch of the douche-tree will be examined. Every corner of our cultural rot will be exposed.

And if we can lust after their hotties along the way, then all the better.

### Product Details

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ISBN-10: 1-4169-5788-X  
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